

IN THE MATTER OF

OERLIKON-BUHRLE HOLDING AG

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3555. Complaint, Feb. 1, 1995--Decision, Feb. 1, 1995

This consent order permits, among other things, a Switzerland-based corporation to acquire Leybold AG, a German firm, but requires the respondent to divest both the Leybold compact disc metallizer business and the Balzers-Pfeiffer turbomolecular pump business, within 12 months, to Commission approved entities. If the divestitures are not completed within 12 months, the Commission is permitted to appoint trustees to complete them. In addition, the respondent is required, for ten years, to obtain Commission approval before acquiring any interest in any entity engaged in either of the two markets at issue.

Appearances

For the Commission: *Ann B. Malester, Michael R. Moiseyev and Mary Lou Steptoe.*

For the respondent: *Tim Fieghery, Kaye, Scholer, Fierman, Hays & Handler, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle"), a Swiss corporation subject to the jurisdiction of the Commission, has proposed to acquire all of the voting stock of Leybold AG ("Leybold"), a wholly-owned subsidiary of Degussa Aktiengesellschaft, ("Degussa"), a German corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Oerlikon-Buhrle is a corporation organized and existing under the laws of Switzerland, with its principal place of business located at Hofwiesenstrasse 135, CH - 8021, Zurich, Switzerland.

2. For purposes of this proceeding, respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. ACQUIRED COMPANY

3. Leybold, a wholly-owned subsidiary of Degussa, is a corporation organized and existing under the laws of the Federal Republic of Germany, with its principal place of business located at Wilhelm-Rohn-Strasse 25, D-6450 Hanau 1, Federal Republic of Germany.

4. Leybold is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

5. Oerlikon-Buhrle proposes to acquire 99.5 percent of the voting stock of Leybold for consideration of DM 99,500,000 ("Acquisition").

IV. THE RELEVANT MARKETS

6. For purposes of this complaint, one relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, distribution and sale of turbomolecular pumps.

7. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the turbomolecular pump market is the United States.

8. The relevant market set forth in paragraphs six and seven is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

9. Entry into the turbomolecular pump market would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraph sixteen because of the difficulty of developing competitive turbomolecular pump designs, establishing manufacturing facilities, organizing a sales and service network, and gaining customer acceptance in the marketplace.

10. Oerlikon-Buhrle and Leybold are actual competitors in the relevant market.

11. For purposes of this complaint, another relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, distribution, and sale of compact disc metallizers.

12. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the compact disc metallizer market is the world.

13. The relevant market set forth in paragraphs eleven and twelve is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

14. Entry into the compact disc metallizer market would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraph sixteen because of the difficulty of developing competitive compact disc metallizer designs, establishing a sales and service presence, and gaining customer acceptance in the marketplace.

15. Oerlikon-Buhrle and Leybold are actual competitors in the relevant market.

V. EFFECTS OF THE ACQUISITION

16. The effect of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in each relevant market in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct actual competition between Oerlikon-Buhrle and Leybold;

- b. By increasing the likelihood that Oerlikon-Buhrle would unilaterally exercise market power;
- c. By increasing the likelihood of collusion or coordinated interaction in the relevant markets;
- d. By increasing the likelihood that consumers would be forced to pay higher prices for turbomolecular pumps and compact disc metallizers;
- e. By increasing the likelihood that technological innovation would be reduced.

VI. VIOLATIONS CHARGED

17. The Acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of certain assets and businesses of Degussa Aktiengesellschaft ("Degussa"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating

its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Oerlikon-Buhrle AG ("Oerlikon-Buhrle") is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its principal executive offices located at Hofwiesenstrasse 135, CH - 8021 Zurich, Switzerland.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Oerlikon-Buhrle*" means Oerlikon-Buhrle Holding AG, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Oerlikon-Buhrle; their directors, officers, employees, agents (including, but not limited to, SKA), and representatives; and their successors and assigns.

B. "*Leybold*" means Leybold AG, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Leybold; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. "*SKA*" means Schweizerische Kreditanstalt, a banking corporation organized, existing and doing business under, and by virtue of the laws of Switzerland. Pursuant to the Trust Agreement dated October 6, 1994, SKA will hold all of the outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Buhrle as of the time Leybold is acquired by Oerlikon-Buhrle, and will be an agent of Oerlikon-Buhrle.

D. "*Balzers-Pfeiffer*" means Balzers-Pfeiffer GmbH, a German corporation, its predecessors, subsidiaries, divisions, and groups and

affiliates controlled by Balzers-Pfeiffer; their directors, officers, employees, agents, and representatives; and their successors and assigns.

E. "*Respondent*" means Oerlikon-Buhrle.

F. "*Commission*" means the Federal Trade Commission.

G. "*Acquisition*" means Oerlikon-Buhrle's acquisition of voting securities of Leybold pursuant to the Purchase Agreement dated January 21, 1994.

H. "*Assets and Businesses*" means all assets, properties, business and goodwill, tangible and intangible, including, without limitation, the following:

1. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, copyrights, trademarks, trade names, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
3. Inventory and storage capacity;
4. All rights, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
5. All rights under warranties and guarantees, express or implied;
6. All books, records, and files; and
7. All items of prepaid expense.

I. "*Trust Agreement*" means the trust agreement dated October 6, 1994, between Oerlikon-Buhrle and SKA, attached hereto as Attachment 1, pursuant to which SKA will hold all of the outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Buhrle, as of the time Leybold is acquired by Oerlikon-Buhrle, and will be an agent of Oerlikon-Buhrle.

J. "*Leybold Compact Disc Metallizer Business*" means all of Leybold's rights, title and interest in and to:

1. Compact disc metallizers, including, but not limited to, Singulus, and all patents, trademarks, intellectual property, production technology and know-how related to the manufacture, distribution and sale of compact disc metallizers; and
2. All of Leybold's Assets and Businesses as further delineated in Schedule A, attached hereto and made a part hereof.

K. "*Leybold Thin Film Coating Systems Business*" means all of Leybold's rights, title and interest, as of the date this agreement is accepted by the Commission, in all Assets and Businesses relating to the development, manufacture, distribution, marketing or sale of vacuum systems and equipment for the deposition of thin films, including without limitation, vacuum web coating systems, architectural glass coaters, compact disc metallizers, compact disc replication lines, compact disc mastering equipment, precision optics coating systems, ophthalmic lens coating systems, decorative hard coating systems, silicon crystal growing systems, and vacuum coating systems for research and development. Such Assets and Businesses shall include all rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits. The Leybold Thin Film Coating Systems Business excludes magnetic and magneto-optical disc coating systems, systems for the manufacture of thin film heads for magnetic drives, vacuum systems for the coating of plastic parts, and vacuum systems for the coating of automotive parts.

L. "*Balzers-Pfeiffer Assets*" means all of the Assets and Businesses of Balzers-Pfeiffer and all of the other Oerlikon-Buhrle Assets and Businesses relating to the development, manufacture, distribution, marketing, or sale of turbomolecular pumps, as delineated in Schedule B, attached hereto and made a part hereof.

M. "*Ophthalmic Coating Business*" means all of Oerlikon-Buhrle's rights, title and interest in all Assets and Businesses relating to the development, manufacture, distribution, marketing, or sale of equipment used in the application of coatings to ophthalmic lenses, including all interests in such Assets and Businesses as acquired from Leybold.

N. "*Compact Disc Metallizers*" means vacuum systems for the deposition of reflective coatings on audio compact discs and CD-ROMs.

O. "*Turbomolecular Pumps*" means vacuum pumps employing turbomolecular processes to generate high vacuum environments.

II.

It is further ordered, That:

A. Oerlikon-Buhrle shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Leybold Compact Disc Metallizer Business, and shall also divest such additional ancillary Assets and Businesses and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Leybold Compact Disc Metallizer Business; provided that Oerlikon-Buhrle is not required to divest any of the assets identified in Part 2 of Schedule A unless such assets are required by the acquirer.

B. Oerlikon-Buhrle shall divest the Leybold Compact Disc Metallizer Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the Leybold Compact Disc Metallizer Business as an ongoing, viable operation, engaged in the same business in which the Leybold Compact Disc Metallizer Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Upon reasonable notice from the acquirer to Oerlikon-Buhrle, for a period of six months following the date of divestiture, Oerlikon-Buhrle shall provide such personnel, information, technical assistance, advice and training to the acquirer as is necessary to transfer the Leybold Compact Disc Metallizer Business pursuant to paragraph II. A. and establish such business as a viable, ongoing concern. Such assistance shall include reasonable consultation with knowledgeable employees of Oerlikon-Buhrle to satisfy the acquirer's management that its personnel are appropriately trained in the manufacture of compact disc metallizers to the extent Oerlikon-Buhrle has the ability to do so after the divestiture is complete. Oerlikon-Buhrle shall not charge the acquirer a rate more than its own direct costs for providing such technical assistance.

D. Pending divestiture of the Leybold Compact Disc Metallizer Business, Oerlikon-Buhrle shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Leybold Compact Disc Metallizer Business and to prevent the destruction, removal, wasting, deterioration or impairment of the Leybold Compact Disc Metallizer Business except for ordinary wear and tear.

E. At the time of the execution of a purchase agreement between Oerlikon-Buhrle and a proposed acquirer of the Leybold Compact Disc Metallizer Business, Oerlikon-Buhrle shall provide the acquirer with a complete list of all non-clerical, salaried employees of the Leybold Compact Disc Metallizer Business, who have been involved in the development, production, distribution, or sale of Leybold compact disc metallizers at any time during the period from September 1, 1992, until the date of the purchase agreement. Such list shall state each such individual's name, position, address, telephone number, and a description of the duties of and work performed by the individual in connection with any compact disc metallizer product developed, produced, or distributed by Leybold.

F. Oerlikon-Buhrle shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in paragraph II. E. of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, Oerlikon-Buhrle shall further provide the Commission-approved acquirer with an opportunity to interview such individuals and negotiate employment contracts with them.

G. Oerlikon-Buhrle shall provide the individuals identified in paragraph II. E. of this order with ample financial incentives to continue in their employment positions during the period covered by the Leybold Hold Separate Agreement, hereto attached, and to accept employment with the Commission-approved acquirer at the time of the divestiture. Such incentives shall include:

1. Continuation of all employee benefits offered by Leybold until the date of the divestiture; and
2. A bonus equal to 25 percent of an employee's annual salary (including any other bonuses) as of the date this order becomes final for any individual who agrees to employment with the Commission-

approved acquirer, payable upon the beginning of their employment by the Commission-approved acquirer.

H. For a period of one (1) year commencing on the date of the individual's employment by the Commission-approved acquirer, Oerlikon-Buhrle shall not re-hire any of the individuals identified in paragraph II.E. of this order who accept employment with the Commission-approved acquirer.

III.

It is further ordered, That:

A. Respondent Oerlikon-Buhrle shall divest, and shall direct SKA to take all steps necessary to divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Balzers-Pfeiffer Assets, and Oerlikon-Buhrle shall also divest such additional ancillary Assets and Businesses and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of Balzers-Pfeiffer; provided that Oerlikon-Buhrle is not required to divest any of the assets identified in Part 2 of Schedule B, unless such assets are required by the acquirer.

B. Oerlikon-Buhrle shall divest, and shall direct SKA to take all steps necessary to divest, the Balzers-Pfeiffer Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Balzers-Pfeiffer Assets is to ensure the continuation of Balzers-Pfeiffer as an ongoing, viable operation, engaged in the same business in which it is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. Provided, however, that nothing in this order shall prevent Oerlikon-Buhrle from transferring the stock and share capital of Balzers-Pfeiffer to SKA at the time Oerlikon-Buhrle acquires Leybold pursuant to the Trust Agreement. However, such transfer shall not fulfill Oerlikon-Buhrle's obligation under this order to divest the Balzers-Pfeiffer Assets.

C. Pending divestiture of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall take such actions, and shall direct SKA to take such actions, as are necessary to maintain the viability and marketability of Balzers-Pfeiffer and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Balzers-Pfeiffer Assets except for ordinary wear and tear.

D. Oerlikon-Buhrle shall take all steps necessary to ensure that SKA complies with the Trust Agreement, including, without limitation, pursuing any legal action it may have against SKA for monetary and equitable damages arising from any breach of the Trust Agreement by SKA. Oerlikon-Buhrle shall not agree to any alteration, reformation, amendment or other change to the Trust Agreement without the prior approval of the Commission. In addition to the requirements of this paragraph III, Oerlikon-Buhrle shall direct SKA to take all steps necessary to accomplish the requirements of this order pertaining to the Balzers-Pfeiffer Assets.

IV.

It is further ordered, That:

A. If Oerlikon-Buhrle has not divested, absolutely and in good faith, and with the prior approval of the Commission, the Leybold Compact Disc Metallizer Business within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Leybold Thin Film Coating Systems Business.

B. If Oerlikon-Buhrle and SKA have not divested, absolutely and in good faith, and with the prior approval of the Commission, the Balzers-Pfeiffer Assets within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Balzers-Pfeiffer Assets.

C. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Oerlikon-Buhrle and in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph IV shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to

it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Oerlikon-Buhrle to comply with this order.

D. If a trustee is appointed by the Commission or a court pursuant to paragraph IV.A. or paragraph IV.B., Oerlikon-Buhrle shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Oerlikon-Buhrle and in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Oerlikon-Buhrle or in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Oerlikon-Buhrle of the identity of any proposed trustee, Oerlikon-Buhrle shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets.

3. Within ten (10) days after appointment of the trustee, Oerlikon-Buhrle shall execute a trust agreement, and in the case of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall direct SKA to execute a trust agreement, that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture(s) required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph IV.D.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets, or to any other relevant information, as the trustee may request. Oerlikon-Buhrle shall develop, and in the case of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall direct SKA to develop, such financial or other information as such trustee may request and shall cooperate with the trustee. Oerlikon-Buhrle shall take no action, and Oerlikon-Buhrle shall direct SKA to take no action, to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Oerlikon-Buhrle or SKA shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Oerlikon-Buhrle's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to the acquirer(s) as set out in paragraphs II and III of this order, as appropriate; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Oerlikon-Buhrle from among those approved by the Commission. If requested by the trustee or acquirer, Oerlikon-Buhrle shall provide the acquirer with the assistance required by paragraph II.C. of this order.

7. The trustee shall serve, without bond or other security, at the cost and expense of Oerlikon-Buhrle, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Oerlikon-Buhrle, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Oerlikon-Buhrle, and the trustee's power shall

be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets.

8. Oerlikon-Buhrle shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph IV of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Leybold Thin Film Coating Systems Business or the Balzers-Pfeiffer Assets.

12. The trustee shall report in writing to Oerlikon-Buhrle and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture(s).

V.

It is further ordered, That, until the earlier of ten (10) years from the date this order becomes final or until Oerlikon-Buhrle has sold all of the Assets and Businesses of either Balzers' ophthalmic lens coating business or Leybold's ophthalmic lens coating business, Oerlikon-Buhrle shall not transfer any interest in the stock, share capital, or assets of the Ophthalmic Coating Business to any third party, other than to a subsidiary of Oerlikon-Buhrle, without providing advance written notification to the Federal Trade Commission. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter "the

Notification"). Oerlikon-Buhrle shall provide to the Federal Trade Commission, at least thirty days prior to transferring any interest in the stock, share capital, or assets of the Ophthalmic Coating Business, both the Notification and supplemental information either in Oerlikon-Buhrle's possession or reasonably available to Oerlikon-Buhrle. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of Oerlikon-Buhrle and of the firm who proposes to acquire the stock, share capital, or assets of the Ophthalmic Coating Business who negotiated the acquisition agreement; and any management or strategic plans discussing the proposed transaction. If, within the thirty-day period, representatives of the Federal Trade Commission make a written request for additional information, Oerlikon-Buhrle shall not consummate the transaction until twenty days after submitting such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

VI.

It is further ordered, That Oerlikon-Buhrle shall comply with all terms of the Balzers-Pfeiffer Agreement to Hold Separate and the Leybold Systems Business Agreement to Hold Separate, attached to this order and made a part hereof as Appendices I and II. The Balzers-Pfeiffer Agreement to Hold Separate the Balzers-Pfeiffer Assets shall continue in effect until Oerlikon-Buhrle and SKA have divested all of the Balzers-Pfeiffer Assets. The Leybold Systems Business Agreement to Hold Separate shall continue in effect until Oerlikon-Buhrle has divested all of the Leybold Compact Disc Metallizer Business or the Leybold Thin Film Coating Systems Business as required by this order.

VII.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Oerlikon-Buhrle shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, the manufacture of turbomolecular pumps;

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of turbomolecular pumps;

C. Acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, the manufacture of compact disc metallizers; or

D. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of compact disc metallizers.

Provided, however, that this paragraph VII shall not apply to the acquisition of products or services acquired in the ordinary course of business, or of any non-exclusive license to any patent or other form of intellectual property (excluding assets of the Leybold Compact Disc Business and Balzers-Pfeiffer).

VIII.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Oerlikon-Buhrle has fully complied with paragraphs II, III, IV, and VI of this order, Oerlikon-Buhrle shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II, III, IV, and VI of this order. Oerlikon-Buhrle shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, IV, and VI of this order, including a description of all substantive contacts or negotiations for the divestiture(s) required by this order, including the identity of all parties contacted. Oerlikon-Buhrle shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Oerlikon-Buhrle shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraphs V and VII of this order.

IX.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers, directors, or employees of respondent. Officers and employees of respondent whose places of employment are outside the United States shall be made available on reasonable notice.

X.

It is further ordered, That

A. Oerlikon-Buhrle shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

SCHEDULE A

Oerlikon-Buhrle shall divest all of the Assets and Businesses of the Leybold Compact Disc Metallizer Business pursuant to the terms

of this order. The assets identified in paragraph I.J. of this order shall include all assets, properties, business and goodwill, tangible and intangible, of Leybold in or relating to the development, manufacture, sale, distribution and marketing of compact disc metallizers, compact disc lines, and compact disc mastering systems, including without limitation, the following:

PART 1

1. All Leybold compact disc metallizers, including, but not limited to, equipment and documentation;
2. All Leybold compact disc metallizer inventory (including work in progress);
3. All lists or other information necessary to source materials, parts, components and other inputs involved in the production of Leybold compact disc metallizers;
4. All rights, title and interest in and results of all research and development efforts by Leybold relating to improvements, developments, and variants of Leybold compact disc metallizer products;

PART 2

5. All Assets and Businesses of Leybold relating solely to the development, manufacture, sale, distribution and/or marketing of compact disc lines and/or compact disc mastering systems, including equipment, documentation, inventory, work in process, information necessary to source materials, parts, components, and other inputs, all rights, title and interest and results of all research and development efforts by Leybold relating solely to improvements, developments, and variants or Leybold compact disc line and or mastering system products, and employment contracts to the extent permissible under applicable law.

SCHEDULE B

Oerlikon-Buhrle shall divest all of the Assets and Businesses of the Balzers-Pfeiffer Assets pursuant to the terms of this order. The assets identified in paragraph I.L. of this order shall include all assets, properties, business and goodwill, tangible and intangible, of Oerlikon-Buhrle as of the date this order is accepted by the

Commission, in or relating to the development, manufacture, marketing, sale, and distribution of turbomolecular pumps, including without limitation, the following:

PART 1

1. All of the stock and share capital, or participation held by Oerlikon-Buhrle of Balzers-Pfeiffer, including, without limitation, all stock, share capital, or participation held in trust by SKA for the account and risk of Oerlikon-Buhrle as of the date Leybold is acquired by Oerlikon-Buhrle;

2. All patents, intellectual property, trademarks, production technology, and know-how related to the development, manufacture, marketing, sale, or distribution of turbomolecular pumps;

3. All rights, title and interest in and results of all research and development efforts relating to improvements, developments, and variants of turbomolecular pump products;

4. All rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits used in the manufacture of turbomolecular pumps;

PART 2

5. All Assets and Businesses of Oerlikon-Buhrle (excluding Balzers-Pfeiffer) in or relating to the sale, distribution or marketing of turbomolecular pumps.

ATTACHMENT 1

TRUST AGREEMENT

PREAMBLE

A. OBH owns 100% of the shares of stock of BHAG.

BHAG is the unrestricted owner of 95.5% of the capital of Balzers Deutschland Holding GmbH with registered seat in Asslar, Germany ("BDH"), which equals a nominal value of DM 38'200'000.--. BHAG controls BDH by votes. The remaining 4.5% of the capital of BDH is owned by IHAG Holding AG.

BDH is the unrestricted owner of 99.5% of the capital of a nominal total value of DM 14'925'000.-- of Balzers-Pfeiffer GmbH

with registered seat in Asslar, Germany ("B-P"). The remaining 0.5% of the capital of B-P is owned by IHAG Holding AG, Zurich.

For the purposes of the following provisions of this Trust Agreement, "Capital Contributions" and/or "Capital Contributions of BDH" shall mean the 95.5% of the capital of BDH owned by BHAG.

The Capital Contributions are not subject to any restrictions regarding their transfer by agreement or through inheritance. According to the Articles of BDH any transfer of Capital Contributions is only subject to the approval of the shareholders (majority of votes recorded).

B. On January 21, 1994, OBH and the German company Degussa AG signed a sales contract under which Degussa AG sold all shares of Leybold AG in Hanau (Germany) to OBH and IHAG Holding AG, Zurich. The effectiveness of that sales contract is subject to the condition that the acquisition of Leybold AG is not prohibited by the German Bundeskartellamt in accordance with Section 24 sec. 2 first sentence GWB.

The sales contract is further subject to the condition that all other competent antitrust authorities which have jurisdiction over this transaction (especially the one of the United States) approve the transaction.

In order to prevent a possible negative decree of both the German Bundeskartellamt ("BKA") and the Federal Trade Commission ("FTC") and in order to ensure that the division turbomolecular pumps of B-P is placed outside the Oerlikon-Buhrle group of companies, BHAG intends to transfer the Capital Contributions to an unrelated third party within twelve (12) months of the date on which the consent order of the FTC enters into force. In the meantime the Capital Contributions shall be held by CS as a trustee of BHAG.

This procedure has been discussed by OBH with both the BKA and the FTC.

C. Under a consent order of the FTC (the text and content of which is unknown to CS), OBH will be required to elect a three-person management committee for the Balzers-Pfeiffer business ("Balzers-Pfeiffer Management Committee"). The Balzers-Pfeiffer Management Committee shall consist of the President, the financial officer of B-P and a financial officer of OBH whose responsibilities with OBH do not involve direct management of OBH's turbomolecular pumps. The Chairman of the Balzers-Pfeiffer Management Committee shall be [name to be inserted by OBH]

(provided he agrees, or a comparable, knowledgeable person among the managers of Balzers-Pfeiffer), who shall remain independent of OBH and competent to assure the continued viability and competitiveness of the B-P assets.

The consent order will provide that OBH shall not exercise, and OBH shall direct CS not to exercise direction or control over, or influence directly or indirectly, B-P, the Balzers-Pfeiffer Management Committee, or any of its operations or businesses; provided, however, that OBH may exercise only such direction and control over B-P as is necessary to assure compliance with the consent order and with all applicable laws.

D. The consent order of the FTC shall further provide as follows:

If OBH and CS have not absolutely and in good faith, and with the prior approval of the FTC, divested B-P within twelve (12) months of the date the order becomes effective, the FTC (or a court upon motion by the FTC) may appoint a trustee to divest B-P (the "FTC Trustee").

Subject to the prior approval of the FTC, the FTC Trustee shall have the exclusive power and authority to divest B-P.

Within ten (10) days after appointment of the FTC Trustee, OBH shall direct CS to execute a trust agreement, that, subject to the prior approval of the FTC and, in the case of a court-appointed FTC Trustee, of the court, transfers to the FTC Trustee all rights and powers necessary to permit the FTC Trustee to effect the divestiture(s) required by this order.

The FTC Trustees shall have full and complete access to the personnel, books, records and facilities related to the B-P assets, or to any other relevant information, as the FTC Trustee may request. OBH shall take no action, and OBH shall direct CS to take no action to interfere with or impede the FTC Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by OBH or CS shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the FTC or, for a court-appointed FTC Trustee, by the court.

The FTC Trustee shall have no obligation or authority to operate or maintain B-P.

Based on these declarations and confirmations the Parties hereto agree to follows:

ART. 1 - TRANSFER OF THE CAPITAL CONTRIBUTIONS OF BDH TO CS

BHAG herewith request CS and CS accepts to purchase the Capital Contributions on a fiduciary basis at the purchase price of SFr. 1.-- (subject to Art. 5 para. 4) in accordance with the respective formal requirements (public deed). CS further agrees to hold and administrate the Capital Contributions in accordance with this Trust Agreement.

ART. 2 - FIDUCIARY HOLDING AND ADMINISTRATION
OF THE CAPITAL CONTRIBUTIONS

CS will hold the Capital Contributions as a trustee in its own name, but for the account and risk of BHAG.

CS shall exercise its fiduciary rights as a shareholder of BDH, including but not limited to the right to vote and the right to elect, exclusively in accordance with the directions of BHAG or of any other party duly authorized by BHAG. CS accepts that BHAG for the purposes of this Trust Agreement has already authorized OBH to give its own directions to CS. For that reason the following provisions emphasize the relationship between CS and OBH, however, without changing the contractual position of BHAG as the trustor.

CS has taken note of the obligations of OBH under the consent order of the FTC set forth hereabove under paragraphs C, and D, and accepts that accordingly OBH will give directions to CS. CS will use its best efforts to comply in good faith with the directions received from OBH, without, however, assuming any direct liability to the FTC for its (CS') own acts, or, quite generally, for the acts of OBH or BHAG or the Balzers-Pfeiffer Management Committee.

Any directions given to CS are subject to the applicable laws and to bonos mores and shall always take the standing and reputation of CS into consideration. CS shall not be obliged to comply with any directions which do not meet the requirements of this provision.

In particular, CS shall:

a) Not make use of its right to vote without having first obtained the directions of OBH. The same shall apply to all other rights of CS consistent with the management of BDG;

b) Transmit immediately all documents which CS receives as a shareholder of BDH without any delay to OBH and CS shall further inform OBH on at least a quarterly basis in writing regarding all matters concerning BDH and B-P to the extent CS has knowledge of such matters as a fiduciary shareholder of BDH and to the extent such transmittal and disclosure of information is not subject to any legal and corporate restrictions;

c) Transfer without any undue delay all performances which CS receives as a shareholder of BDH including but not limited to dividends on the Capital Contributions to BHAG;

d) Subject to Art. 5 para. 3 hereafter, not dispose of the Capital Contributions held by CS without the prior written approval of OBH;

e) Transfer the Capital Contributions on first demand of OBH to a third party named by OBH;

f) Not incur any extraordinary expenses and not enter into any extraordinary obligations without the prior written approval of OBH;

g) At all times act in good faith in the exclusive economic interest of BHAG even if it is impossible for CS to obtain directions from OBH in time for any other reason whatsoever;

h) To treat the present Trust Agreement strictly confidential. Exemptions from this obligation to special confidentiality and from bank secrecy obligations are however permitted if CS would suffer substantial disadvantages (i.e. as a result of an imputation of the Capital Contributions to the taxable assets of CS) or in cases where CS is obligated by law to disclose this Trust Agreement (i.e. under binding orders issued in the course of a criminal procedure, antitrust procedure, procedures of supervising authorities or securities (SEC) authorities). In the event of any such exemption CS shall immediately inform OBH regarding its duty to disclose. The parties hereto agree, however, that each of them or both of them will inform the German Bundeskartellamt and the FTC and the German, Swiss and US tax authorities of this Trust Agreement.

ART. 3 - INDEMNIFICATION OF CS

BHAG shall reimburse CS any and all costs and expenses (with interest) incurred by CS in the course of the correct performance of CS' duties and obligations under this Trust Agreement. The reimbursement shall in particular include any costs and expenses incurred in connection with the transfer, administration and sale of

the Capital Contributions as well as for instance the costs of external legal counsel to CS in connection with the conclusion and performance of this Trust Agreement.

OBH indemnifies and holds CS harmless against any and all claims of third parties, including claims of tax authorities and labor unions, and holds CS free of any obligations which CS might incur in the course of the correct performance of this Trust Agreement.

ART. 4 - NON-DEPRIVAL OF B-P OF ASSETS

OBH and BHAG shall not undertake any activities and shall not direct CS to undertake any activities which would deprive B-P of any of its assets belonging to the business of high vacuum pumps or which otherwise might impair the competitiveness of B-P in this field. In any event, OBH and BHAG shall not give any such directions to CS either. However, this interdiction does not apply to activities in the field of laboratory equipment and pre-vacuum pumps.

ART. 5 - NON-TRANSFER OF CAPITAL CONTRIBUTIONS TO OBH AND/OR BHAG

In full knowledge of Art. 404 of the Swiss Code of Obligations ("CO"), OBH and BHAG represent that they shall in no event request the transfer of the Capital Contributions of BDH and also the capital contributions of B-P held by BDH to OBH, BHAG or to any other company of the Oerlikon-Buhrle Group of Companies as long as the Capital Contributions of B-P held by BDH are not yet transferred to an unrelated third party. This interdiction shall become ineffective as soon as it becomes clear that OBH will not be permitted to acquire the Leybold-Group for antitrust reasons or if the German Bundeskartellamt confirms in writing that it waives the requirement to sell the Capital Contributions to an unrelated third party.

Subject to the pending authorizations of FTC and BKA for the acquisition of Leybold AG by the Oerlikon-Buhrle Group, BHAG will use its best efforts to sell the Capital Contributions to an unrelated third party within twelve (12) months of the date on which the consent order of the FTC enters into force.

If BHAG is unable to find a suitable unrelated third party as buyer for the Capital Contributions within twelve (12) months of the date on which the consent order of the FTC becomes final, CS shall

continue to hold and administrate the Capital Contributions until the FTC Trustee sells the Capital Contributions to such unrelated third party in accordance with the consent order of the FTC.

In any event CS shall pay the full purchase price paid by such unrelated third party to BHAG without any deductions, other than the purchase price of SFr. 1.-- stipulated in Art. 1 and any claims CS may have under the present Trust Agreement.

ART. 6 - FEES

As consideration for its performance under this Trust Agreement until February 28, 1995 CS has received from OBH a contingent fee of SFr. 70'000.--. In addition, CS shall receive a further contingent fee of SFr. 130'000.-- at the date of the closing of the acquisition of Leybold AG by the Oerlikon-Buhrle Group of Companies. If CS shall continue to hold the Capital Contributions as a trustee of BHAG after that date, CS shall further receive a quarterly contingent fee of SFr. 50'000.--, payable at the end of each three months period starting March 1, 1995. Such quarterly contingent fee shall be paid pro rata temporis in the event that the fiduciary relationship under this Trust Agreement between CS and OBH/BHAG ends before any running period of three months.

In addition to the contingent fees mentioned above, CS shall receive an additional contingent fee of SFr. 100'000.-- payable on the date of the signature of a sales contract for the sale of the Capital Contributions to an unrelated third party or (subject to the approval of the competent antitrust authorities) to a company of the Oerlikon-Buhrle Group.

ART. 7 - JOINT LIABILITY

OBH and BHAG shall be jointly and severally liable with respect to the performance of all of their obligations under this Trust Agreement. It is in the sole discretion of CS to decide if it wishes to fulfill its obligations towards BHAG or OBH and CS shall be released from any obligation which it has performed to either BHAG or OBH respectively.

ART. 8 - GENERAL CONDITIONS

This Trust Agreement has been concluded for an unlimited period of time and can be terminated by each party in accordance with Art. 404 CO.

Any termination of this Trust Agreement by CS shall not entitle BHAG or OBH to any claim against CS, even if such termination occurs at an unreasonable time in the meaning of Art. 404 II CO.

In the event of any termination of this Trust Agreement, BHAG shall accept the transfer of the Capital Contributions from CS to BHAG against consideration of SFr. 1.--, provided that on the date of such termination the Capital Contributions are still owned by CS as a trustee of BHAG.

The Board of Directors of OBH has approved this Trust Agreement.

Any amendments of this Trust Agreement shall be made in writing.

This Trust Agreement supersedes and replaces the Agreement between the parties dated May 26, 1994.

If any provision of this Trust Agreement shall be held ineffective, the validity of the remaining provisions hereof shall not be challenged thereby and the parties shall use their best efforts to substitute any such ineffective provision by a provision allowing to maintain the purpose of the replaced provision.

ART. 9 - ARBITRATION

Any disputes arising out of the present Trust Agreement are to be submitted to a court of three arbitrators of Zurich Chamber of Commerce with seat in Zurich, one arbitrator to be appointed by each of the parties, for final decision pursuant to the provisions of its Conciliation and Arbitration Rules.

ART. 10 - APPLICABLE LAW

This Trust Agreement shall be subject to and construed in accordance with Swiss law, in particular sec. 394 *et seq.* CO.

APPENDIX I

BALZERS-PFEIFFER AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and between Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle"), a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business at Hofwiesenstrasse 135, CH-8021 Zurich, Switzerland 4002; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, on January 21, 1994, Oerlikon-Buhrle entered into an Agreement with Degussa Aktiengesellschaft ("Degussa") to acquire all the voting stock of Leybold AG ("Leybold") (hereinafter "Acquisition"); and

Whereas, Leybold, a wholly-owned subsidiary of Degussa, with its principal office and place of business located at Wilhelm-Rohn-Strasse 25, D-6450 Hanau 1, Federal Republic of Germany, manufactures and markets, among other things, turbomolecular pumps; and

Whereas, Oerlikon-Buhrle, with its principal office and place of business located at Hofwiesenstrasse 135, CH-8021 Zurich, Switzerland, through its subsidiary Balzers-Pfeiffer GmbH ("Balzers-Pfeiffer"), manufactures and markets, among other things, turbomolecular pumps; and

Whereas, Schweizerische Kreditanstalt ("SKA"), with its principal office and place of business located at Paradeplatz, CH-8001 Zurich, Switzerland, will hold all outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Buhrle at the time Oerlikon-Buhrle acquires Leybold pursuant to the trust agreement attached to the proposed order as Attachment 1; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Balzers-Pfeiffer Assets, as defined in paragraph I.L. of the Consent Agreement, during the period prior to the final acceptance of the order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Balzers-Pfeiffer Assets and the Commission's right to have Balzers-Pfeiffer continue as a viable competitor; and

Whereas, the purpose of the Hold Separate is:

A. To preserve Balzers-Pfeiffer as a viable, competitive, and independent business pending divestiture of the Balzers-Pfeiffer Assets,

B. To remedy any anticompetitive effects of the Acquisition, and

C. To preserve the Balzers-Pfeiffer Assets as viable, ongoing assets engaged in the turbomolecular pump business until divestiture is achieved; and

Whereas, Oerlikon-Buhrle's entering into this Hold Separate shall in no way be construed as an admission by Oerlikon-Buhrle that the Acquisition is illegal; and

Whereas, Oerlikon-Buhrle understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the proposed order for public comment it will

grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from Oerlikon-Buhrle with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate, the Agreement Containing Consent Order to which it is annexed and made a part thereof, and the order, once it becomes final, and in the event that the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Balzers-Pfeiffer Assets pursuant to the Consent Order, as follows:

1. Oerlikon-Buhrle agrees to execute and be bound by the Consent Agreement.

2. Oerlikon-Buhrle agrees that from the date this Hold Separate is accepted until the earliest of the times listed in subparagraphs 2.a. - 2.b., it will comply with the provisions of paragraph three. of this Hold Separate.

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's rules;

b. The time that the divestiture of the Balzers-Pfeiffer Assets required by paragraph II and/or paragraph IV of the Consent Agreement is completed.

3. Oerlikon-Buhrle shall hold, and Oerlikon-Buhrle shall direct SKA to take all steps necessary to hold, the Balzers-Pfeiffer Assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Balzers-Pfeiffer Assets, as defined in paragraph I.L. of the Consent Agreement, shall be held separate and apart and shall be operated independently of Oerlikon-Buhrle (meaning here and hereinafter, Oerlikon-Buhrle excluding the Balzers-Pfeiffer Assets and excluding all personnel connected with Balzers-Pfeiffer as of the date this Agreement is signed) except to the extent that Oerlikon-Buhrle must exercise direction and control over the Balzers-Pfeiffer Assets to assure compliance with this Hold Separate or the Consent Agreement.

b. Oerlikon-Buhrle shall maintain, and shall direct SKA to maintain, the marketability, viability, and competitiveness of the Balzers-Pfeiffer Assets, and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear, and is shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of the Balzers-Pfeiffer Assets.

c. Oerlikon-Buhrle shall appoint Wolfgang Dondorf, the Geschaeftsfuehrer ("President") of Balzers-Pfeiffer, provided he agrees, or a comparable, knowledgeable person among the top management of the Balzers-Pfeiffer Assets, as President to manage and maintain Balzers-Pfeiffer on a day to day basis during the Hold Separate. The President shall have exclusive management and control of Balzers-Pfeiffer, and shall manage Balzers-Pfeiffer independently of Oerlikon-Buhrle's other businesses.

d. The President shall report exclusively to the Balzers-Pfeiffer Aufsichtsrat ("Board"), which shall be appointed by Oerlikon-Buhrle. The Board shall consist of Wolfgang Dondorf, who is the President of Balzers-Pfeiffer as of the date of this Hold Separate; Wilfried Glaum, who is the Controller of Balzers-Pfeiffer (or a comparable, knowledgeable person among the top management of Balzers-Pfeiffer); and Dr. Beat Baumgartner, who is an Oerlikon-Buhrle financial officer (or a comparable, knowledgeable person from Oerlikon-Buhrle's financial office who has no direct involvement with Oerlikon-Buhrle's turbomolecular pump business). The President shall be the Chairman of the Board. Except for the Oerlikon-Buhrle employee serving on the Board, Oerlikon-Buhrle shall not permit any officer, employee, or agent of Oerlikon-Buhrle also to be an officer, employee or agent of Balzers-Pfeiffer. Each Board member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions set forth in Attachment A, appended to this Hold Separate. The Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the Board during the term of the Hold Separate shall be audio recorded, and the recording shall be retained for two (2) years after the termination of the Hold Separate.

e. All material transactions, out of the ordinary course of business and not precluded by paragraph three hereof, shall be subject to a majority vote of the Board.

f. Oerlikon-Buhrle shall not exercise, and Oerlikon-Buhrle shall direct SKA not to exercise, direction or control over, or influence directly or indirectly, the Balzers-Pfeiffer Assets, the Board, or the President, or any of their operations, assets, or businesses; provided, however, that Oerlikon-Buhrle may exercise only such direction and control over the Balzers-Pfeiffer Assets as is necessary to assure compliance with this Hold Separate, the order and with all applicable laws and except as otherwise provided in this Hold Separate.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Acquisition, defending investigations or litigation, obtaining legal advice, complying with this Hold Separate or the Consent Order or negotiating agreements to divest assets, Oerlikon-Buhrle shall not receive or have access to, or the use of, any material confidential information of the Balzers-Pfeiffer Assets or the activities of the President or Board not in the public domain, nor shall Balzers-Pfeiffer, the President or the Board receive or have access to, or the use of, any material confidential information about Oerlikon-Buhrle. Oerlikon-Buhrle may receive on a regular basis from Balzers-Pfeiffer aggregate financial information necessary and essential to allow Oerlikon-Buhrle to file financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Oerlikon-Buhrle from sources other than Balzers-Pfeiffer or the Board, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

h. Except as is permitted by this Hold Separate, the Board member appointed by Oerlikon-Buhrle who is also an officer, agent, or employee of Oerlikon-Buhrle ("Oerlikon-Buhrle Board Member") shall not receive any Balzers-Pfeiffer material confidential information and shall not disclose any such information obtained through his or her involvement with Balzers-Pfeiffer to Oerlikon-Buhrle or use it to obtain any advantage for Oerlikon-Buhrle. The Oerlikon-Buhrle Board Member shall participate in matters that come

before the Board only for the limited purpose of considering any capital investment of over \$250,000, approving any proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing material transactions described in subparagraph 3.e, and carrying out Oerlikon-Buhrle's responsibilities under the Hold Separate and the order. Except as permitted by the Hold Separate, the Oerlikon-Buhrle Board Member shall not participate in any matter, or attempt to influence the decisions of the Balzers-Pfeiffer management with respect to matters that would involve a conflict of interest between Oerlikon-Buhrle and Balzers-Pfeiffer. Meetings of the Board during the term of the Hold Separate shall be audio recorded and the recording retained for two (2) years after the termination of the Hold Separate.

i. Oerlikon-Buhrle shall not change, and Oerlikon-Buhrle shall direct SKA not to change, the composition of the Board unless the Chairman of the Board consents. The Chairman of the Board shall have the power to remove members of the Board for cause and to require Oerlikon-Buhrle to appoint replacement members to the Board in the same manner as provided in paragraph 3.d. of this Hold Separate. Oerlikon-Buhrle shall not change the composition of the management of Balzers-Pfeiffer, except that the Board shall have the power to remove management employees for unsatisfactory performance or for cause.

j. If the President or member of the Board ceases to act or fails to act diligently, a substitute President or member of the Board shall be appointed in the same manner as provided in paragraphs 3.c. and 3.d.

k. Oerlikon-Buhrle sales and distribution personnel connected with the Balzers-Pfeiffer Assets or providing support services to Balzers-Pfeiffer as of the date this Hold Separate is signed shall continue, as employees of Oerlikon-Buhrle, to provide such services as they are providing to Balzers-Pfeiffer as of the date of this Hold Separate. Such Oerlikon-Buhrle personnel must retain and maintain all material confidential information relating to Balzers-Pfeiffer on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Oerlikon-Buhrle business, including without limitation the turbomolecular pumps business. Such Oerlikon-Buhrle personnel

shall also execute a confidentiality agreement prohibiting the disclosure of any confidential Balzers-Pfeiffer information.

l. Balzers-Pfeiffer shall be staffed with sufficient employees to maintain the viability and competitiveness of the Balzers-Pfeiffer Assets, which employees shall be Balzers-Pfeiffer employees and may also be hired from sources other than Balzers-Pfeiffer. Each management employee of Balzers-Pfeiffer shall execute a confidentiality agreement prohibiting the disclosure of any Balzers-Pfeiffer confidential information.

m. Oerlikon-Buhrle shall circulate to the management employees of Balzers-Pfeiffer and appropriately display a notice of this Hold Separate and consent order in the form attached hereto as Attachment A.

n. Oerlikon-Buhrle shall cause, and Oerlikon-Buhrle shall direct SKA to cause, Balzers-Pfeiffer to continue to expend funds for research and development, quality control, manufacturing and marketing of Balzers-Pfeiffer products at a level not lower than that expended in fiscal 1994 or budgeted in fiscal 1995, and shall increase such spending as deemed reasonably necessary by the Board in light of competitive conditions. If necessary, Oerlikon-Buhrle shall provide Balzers-Pfeiffer with any funds necessary to accomplish the foregoing. Oerlikon-Buhrle shall continue to provide to Balzers-Pfeiffer such support services as it provided prior to the Acquisition.

o. All earnings and profits of Balzers-Pfeiffer shall be retained separately by Balzers-Pfeiffer. If necessary, Oerlikon-Buhrle shall provide Balzers-Pfeiffer with sufficient working capital to operate at the rate of operation in effect during the twelve (12) months preceding the date of the Hold Separate. Balzers-Pfeiffer may pay dividends in the same manner as it paid dividends prior to the Acquisition if its 1994 earnings enable it to do so; provided, however that any such dividends shall not exceed the amount of dividends Balzers-Pfeiffer paid in 1993.

p. Oerlikon-Buhrle shall indemnify the Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Board members.

q. Notwithstanding the provisions of paragraph 3.h., companies who undertake a due diligence process in the course of negotiations to purchase the Balzers-Pfeiffer Assets shall be accompanied and

assisted by the Oerlikon-Buhrle Board Member, in addition to appropriate Balzers-Pfeiffer employees selected by the Board. The Oerlikon-Buhrle Board Member may delegate tasks relating to such due diligence to attorneys, accountants and/ or other financial employees of Oerlikon-Buhrle who are not directly engaged in the Oerlikon-Buhrle turbomolecular pump business; provided, however, that such Oerlikon-Buhrle employees, accountants and attorneys shall execute a confidentiality agreement prohibiting the disclosure of any Balzers-Pfeiffer confidential information.

4. Should the Federal Trade Commission seek in any proceeding to compel Oerlikon-Buhrle to divest itself of the Balzers-Pfeiffer Assets or any additional assets, as provided in the proposed order, or to seek any other equitable relief, Oerlikon-Buhrle shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Oerlikon-Buhrle shall also waive all rights to contest the validity of this Hold Separate.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege or provision of applicable law, and upon written request with reasonable notice to Oerlikon-Buhrle made to its General Counsel, Oerlikon-Buhrle shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Oerlikon-Buhrle and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Oerlikon-Buhrle relating to compliance with this Hold Separate;

b. Upon five (5) days' notice to Oerlikon-Buhrle and without restraint or interference from it, to interview officers or employees of Oerlikon-Buhrle, who may have counsel present, regarding any such matters.

6. This Hold Separate shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND
REQUIREMENT FOR CONFIDENTIALITY

Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle") has entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission ("Commission") relating to the divestiture of the Balzers-Pfeiffer Assets, which include Balzers-Pfeiffer GmbH ("Balzers-Pfeiffer"). Until after the Commission's order becomes final and the Balzers-Pfeiffer Assets are divested, Balzers-Pfeiffer must be managed and maintained as a separate, ongoing business, independent of all other Oerlikon-Buhrle businesses. All competitive information relating to the Balzers-Pfeiffer Assets, including, without limitation, its turbomolecular pump business, must be retained and maintained by the persons involved in the Balzers-Pfeiffer Assets, including employees and agents of Oerlikon-Buhrle and Balzers-Pfeiffer, on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment or agency involves any other Oerlikon-Buhrle business. Similarly, all such persons involved in any other Oerlikon-Buhrle business shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment or agency involves the Balzers-Pfeiffer Assets.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the consent order, may subject Oerlikon-Buhrle to civil penalties and other relief as provided by law.

APPENDIX II

LEYBOLD SYSTEMS BUSINESS AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and between Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle"), a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business at Hofwiesenstrasse 135, CH-8021 Zurich, Switzerland 4002; and the Federal Trade Commission ("Commission"), an

independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, on January 21, 1994, Oerlikon-Buhrle entered into an Agreement with Degussa Aktiengesellschaft ("Degussa") to acquire all the voting stock of Leybold AG ("Leybold") (hereinafter "Acquisition"), and

Whereas, Leybold AG, a wholly-owned subsidiary of Degussa, with its principal office and place of business located at Wilhelm-Rohn-Strasse 25, D-6450 Hanau 1, Federal Republic of Germany, through its Thin Film Coating Systems Business, manufactures and markets, among other things, compact disc metallizers; and

Whereas, Oerlikon-Buhrle, with its principal office and place of business located at Hofwiesenstrasse 135, CH-8021 Zurich, Switzerland, through its subsidiary Balzers AG, manufactures and markets, among other things, compact disc metallizers; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of Leybold Thin Film Coating Systems Business ("Leybold Systems Business"), as defined in paragraph I.K. of the Consent Agreement, during the period prior to the final acceptance of the order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Leybold Compact Disc Metallizer Business or the Leybold Systems Business and the

Commission's right to have the Leybold Systems Business continue as a viable competitor; and

Whereas, the purpose of the Hold Separate is:

A. To preserve the Leybold Systems Business and the Leybold Compact Disc Metallizer Business as a viable, competitive, and independent business pending divestiture of the Leybold Compact Disc Metallizer Business or the Leybold Systems Business,

B. To remedy any anticompetitive effects of the Acquisition, and

C. To preserve the Leybold Systems Business as viable, ongoing assets engaged in the manufacture and sale of vacuum systems and equipment for the deposition of thin films until divestiture is achieved; and

Whereas, Oerlikon-Buhrle's entering into this Hold Separate shall in no way be construed as an admission by Oerlikon-Buhrle that the Acquisition is illegal; and

Whereas, Oerlikon-Buhrle understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the proposed order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent order, it will not seek further relief from Oerlikon-Buhrle with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate, the Agreement Containing Consent Order to which it is annexed and made a part thereof, and the order, once it becomes final, and in the event that the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Leybold Systems Business pursuant to the consent order, as follows:

1. Oerlikon-Buhrle agrees to execute and be bound by the Consent Agreement.

2. Oerlikon-Buhrle agrees that from the date this Hold Separate is accepted until the earliest of the times listed in subparagraphs 2.a. - 2.b., it will comply with the provisions of paragraph three of this Hold Separate:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's rules; or

b. The time that divestiture of the Leybold Compact Disc Metallizer Business or the Leybold Systems Business required by paragraph II and/or paragraph IV of the Consent Agreement is completed.

3. Oerlikon-Buhrle shall hold the Leybold Systems Business, separate and apart on the following terms and conditions:

a. Leybold Systems Business, as defined in paragraph I.K. of the Consent Agreement, shall be held separate and apart and shall be operated independently of Oerlikon-Buhrle (meaning here and hereinafter, Oerlikon-Buhrle excluding Leybold Systems Business and excluding all personnel connected with the Leybold Systems Business as of the date this Agreement is signed, but including all other portions of Leybold), except to the extent that Oerlikon-Buhrle must exercise direction and control over the Leybold Systems Business to assure compliance with this Hold Separate or the Consent Agreement.

b. Oerlikon-Buhrle shall maintain the marketability, viability, and competitiveness of the Leybold Systems Business, including the Leybold Compact Disc Metallizer Business, and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or business it may have to divest except in the ordinary course of business and except for ordinary wear and tear, and it shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of the Leybold Systems Business including the Leybold Compact Disc Metallizer Business.

c. Oerlikon-Buhrle shall appoint Roland Lacher, the general manager of the Leybold Systems Business, provided he agrees, or a comparable, knowledgeable person among the top management of the Leybold Systems Business, as Manager to manage and maintain the

Leybold Systems Business on a day to day basis during the Hold Separate. The Manager shall have exclusive management and control of the Leybold Systems Business, and shall manage the Leybold Systems Business independently of Oerlikon-Buhrle's other businesses.

d. The Manager shall report exclusively to the Leybold Systems Business Management Committee ("Management Committee"), which shall be appointed by Oerlikon-Buhrle. The Committee shall consist of Roland Lacher, who is the manager of the Leybold Compact Disc Metallizer business as of the date of this Hold Separate (or a comparable, knowledgeable person from among the top management of the Leybold Compact Disc Metallizer business); Dr. Joachim Manke, who is a manager of the Leybold Systems Business (or a comparable, knowledgeable person from among the top management of the Leybold Systems business); and Dr. Beat Baumgartner, who is an Oerlikon-Buhrle financial officer (or a comparable, knowledgeable person from Oerlikon-Buhrle's financial office who has no direct involvement with Oerlikon-Buhrle's vacuum systems business). The Manager shall be the Chairman of the Management Committee. Except for the Oerlikon-Buhrle employee serving on the Management Committee, Oerlikon-Buhrle shall not permit any officer, employee, or agent of Oerlikon-Buhrle also to be an officer, employee or agent of the Leybold Systems Business. Each Management Committee member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions set forth in Attachment A, appended to this Hold Separate. The Management Committee shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the Management Committee during the term of the Hold Separate shall be audio recorded, and the recording shall be retained for two (2) years after the termination of the Hold Separate.

e. All material transactions, out of the ordinary course of business and not precluded by paragraph three hereof, shall be subject to a majority vote of the Management Committee.

f. Oerlikon-Buhrle shall not exercise direction or control over, or influence directly or indirectly, the Leybold Systems Business, including the Leybold Compact Disc Metallizer Business, the Management Committee, or the Manager of the Leybold Systems Business, any of their operations, assets, or businesses; provided, however, that Oerlikon-Buhrle may exercise only such direction and

control over the Leybold Systems business as is necessary to assure compliance with this Hold Separate, the order and with all applicable laws and except as otherwise provided in this Hold Separate.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Acquisition, defending investigations or litigation, obtaining legal advice, complying with this Hold Separate or the consent order of negotiating agreements to divest assets, Oerlikon-Buhrle shall not receive or have access to, or the use of, any material confidential information of the Leybold Systems Business or the activities of the Manager or Management Committee not in the public domain, nor shall the Leybold Systems Business, Manager, or the Management Committee receive or have access to, or the use of, any material confidential information about Oerlikon-Buhrle. Oerlikon-Buhrle may receive on a regular basis from the Leybold Systems Business aggregate financial information necessary and essential to allow Oerlikon-Buhrle to file financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Oerlikon-Buhrle from source other than the Leybold Systems Business or the Management Committee, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

h. Except as is permitted by this Hold Separate, the Management Committee member appointed by Oerlikon-Buhrle who is also an officer, agent, or employee of Oerlikon-Buhrle ("Oerlikon-Buhrle Management Committee Member") shall not receive any Leybold Systems Business material confidential information and shall not disclose any such information obtained through his or her involvement with the Leybold Systems Business to Oerlikon-Buhrle or use it to obtain any advantage for Oerlikon-Buhrle. The Oerlikon-Buhrle Management Committee member shall participate in matters that come before the Management Committee only for the limited purpose of considering any capital investment of over \$250,000, approving any proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing material transactions described in subparagraph

3.e, and carrying out Oerlikon-Buhrle's responsibilities under the Hold Separate and the order. Except as permitted by the Hold Separate, the Oerlikon-Buhrle Management Committee Member shall not participate in any matter, or attempt to influence the votes of the other directors on the Management Committee with respect to matters that would involve a conflict of interest between Oerlikon-Buhrle and the Leybold Systems Business.

i. Oerlikon-Buhrle shall not change the composition of the Management Committee unless the Management Committee consents. The Chairman of the Management Committee shall have the power to remove members of the Management Committee for cause and to require Oerlikon-Buhrle to appoint replacement members to the Management Committee in the same manner as provided in paragraph 3.d. of this Hold Separate. Oerlikon-Buhrle shall not change the composition of the management of the Leybold System Business, except that the Management Committee shall have the power to remove management employees unsatisfactory performance or for cause.

j. If the Chairman of the Management Committee ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraphs 3.c. and 3.d.

k. Oerlikon-Buhrle personnel connected with the Leybold Systems Business or providing support services to the Leybold Systems Business as of the date this Hold Separate is signed may continue, as employees of Oerlikon-Buhrle, to provide such services as they are currently providing to the Leybold Systems Business. Such Oerlikon-Buhrle personnel must retain and maintain all material confidential information relating to the Leybold Systems Business on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Oerlikon-Buhrle business.

l. The Leybold Systems Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Leybold Systems Business, which employees shall be the Leybold Systems Business' employees and may also be hired from source other than Oerlikon-Buhrle. Each management employee of the Leybold Systems Business shall execute a confidentiality agreement

prohibiting the disclosure of any Leybold Systems Business confidential information.

m. Oerlikon-Buhrle shall circulate to the management employee of the Leybold Thin Film Coating Systems Business and appropriately display a notice of this Hold Separate and consent order in the form attached hereto as Attachment A.

n. The Leybold Systems Business shall continue to expend funds for research and development, quality control, and marketing of Leybold Systems Business products at a level not lower than that budgeted for either the 1993 or 1994 fiscal year, and shall increase such spending as deemed reasonably necessary in light of competitive conditions. Within thirty (30) days of the date of this Hold Separate, the Chairman of the Management Committee shall develop a budget and operating plan for the 1995 fiscal year that complies with the provisions of this paragraph and present it to the Management Committee for approval. If necessary, Oerlikon-Buhrle shall provide the Leybold Systems Business with any funds to accomplish the foregoing. Oerlikon-Buhrle shall provide the Leybold Systems Business such support services as provided by Leybold prior to the Acquisition.

o. Oerlikon-Buhrle shall provide the Leybold Systems Business with sufficient working capital to operate at a level not less than the rate of operation in effect during the twelve (12) months preceding the date of the Hold Separate.

p. The Management Committee shall serve at the cost and expense of Oerlikon-Buhrle. Oerlikon-Buhrle shall indemnify the Management Committee against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Management Committee members.

q. The Management Committee shall have access to and be informed about all companies who inquire about, seek or propose to buy the Leybold Systems Business.

r. Notwithstanding the provisions of paragraph 3.h., companies who undertake a due diligence process in the course of negotiations to purchase the Leybold Compact Disc Metallizer Assets may be accompanied and assisted by the Oerlikon-Buhrle Management Committee Member, in addition to appropriate Leybold Systems Business employees selected by the Management Committee. The

Oerlikon-Buhrle Management Committee Member may delegate tasks relating to such due diligence to attorneys, accountants and/or other financial employees of Oerlikon-Buhrle who are not directly engaged in the Oerlikon-Buhrle compact disc metallizer business; provided, however, that such Oerlikon-Buhrle employees, accountants and attorneys shall execute a confidentiality agreement prohibiting the disclosure of any Leybold Systems Business confidential information.

4. Should the Federal Trade Commission seek any proceeding to compel Oerlikon-Buhrle to divest the Leybold Compact Disc Metallizer Business, Leybold Systems Business or any additional assets, as provided in the proposed order, or to seek any other equitable relief, Oerlikon-Buhrle shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Oerlikon-Buhrle shall also waive all rights to contest the validity of this Hold Separate.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege or provision of applicable law, and upon written request with reasonable notice to Oerlikon-Buhrle made to its General Counsel, Oerlikon-Buhrle shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Oerlikon-Buhrle and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Oerlikon-Buhrle or relating to compliance with this Hold Separate;

b. Upon five (5) days' notice to Oerlikon-Buhrle, and without restraint or interference from it, to interview officers or employees of Oerlikon-Buhrle, who may have counsel present, regarding any such matters.

6. This Hold Separate shall not be binding until approved the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND
REQUIREMENT FOR CONFIDENTIALITY

Oerlikon-Buhrle Holding Ag ("Oerlikon-Buhrle") and Leybold have entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission ("Commission") relating to the divestiture of the Leybold Compact Disc Metallizer Business and Leybold Thin Film Coating Systems Business. Until after the Commission's order becomes final and the Compact Disc Metallizer Business Assets are divested, the Leybold Thin Film Coating Systems Business must be managed and maintained as a separate, ongoing business, independent of all other Oerlikon-Buhrle businesses. All competitive information relating to the Leybold Thin Film Coating Systems Business must be retained and maintained by the persons involved in the Leybold Thin Film Coating Systems Business on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment or agency involves any other Oerlikon-Buhrle business shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment or agency involves the Leybold Thin Film Coating Systems Business.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the consent order, may subject Oerlikon-Buhrle to civil penalties and other relief as provided by law.

IN THE MATTER OF

OLSEN LABORATORIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3556. Complaint, Feb. 6, 1995--Decision, Feb. 6, 1995*

This consent order prohibits, among other things, two Kansas-based firms and an official from making false claims for Eez-Away, an arthritis pain treatment, or similar products. The consent order requires the respondents to possess competent and reliable scientific evidence before making any health or medical benefit claim for any personal or household product or service they market in the future; requires them to clearly identify any future infomercial that they disseminate as paid advertising; and prohibits them from misusing endorsements.

Appearances

For the Commission: *Lesley Anne Fair* and *Beth M. Grossman*.

For the respondents: *Tish Pahl, Olsson, Frank & Weeda*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Olsen Laboratories, Inc. and Richfield Distributors, Inc., corporations, and Peter F. Olsen, individually and as an officer and director of said corporations ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Olsen Laboratories, Inc. is a Delaware corporation, with its principal office and place of business at 11088 Alhambra Street, Leawood, Kansas.

Respondent Richfield Distributors, Inc. is a New York corporation, with its principal office and place of business at 11088 Alhambra Street, Leawood, Kansas.

Respondent Peter F. Olsen is an officer and director of Olsen Laboratories, Inc. and Richfield Distributors, Inc. Individually or in